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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4375 of 2006
Date of decision: 7.9.2007

Bhawanjit Singh and others **...Petitioners**

Versus

Jaswinderjit Singh Bhuller and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Santosh Kumar, Advocate and Mr. Sham Lal, Advocate
for the petitioners.

Mr. K.S.Boparai, Advocate for the respondents.

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RAJESH BINDAL, J.

Challenge in the present petition, filed under Article 227 of the Constitution of India, is to order dated May 9, 2006 passed by the Civil Judge, (Junior Division), Ludhiana whereby application filed by the petitioners-defendants for amendment of the written statement has been dismissed.

This is an unfortunate dispute between the brothers/their family. The deceased Amarjit Singh Bhullar, who is now represented by his sons filed a suit for possession of room measuring 15' X 10' alongwith Chaubhara measuring 15' X 10' forming part of property bearing Municipal No. 2411/1 Krishna Nagar, Ludhiana and for decree of permanent injunction restraining the petitioners-defendants from making any alternation, damaging or from changing nature and from transferring possession of the property in any manner whatsoever. In the suit, it was alleged by the respondents-plaintiffs that they are owners of property measuring 70.4/9 sq. yards bearing Municipal No. 2411/1, Krishna Nagar, Ludhiana. The claim was made on the basis of sale deed dated July 5, 1985 executed in his favour by his mother Smt. Tejwant Kaur.

In the written statement filed, the petitioners-defendants

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claimed that they are owners of the property jointly with all the brothers and sisters as Smt. Tejwant Kaur died intestate. Therefore, respondents-plaintiffs became owner of 1/4th share of the property in dispute and other sons and daughters are entitled to other 3/4th share. It was further submitted that the sale deed dated July 5, 1985 is without any consideration and is a forged document as there was no question of registration of the sale deed for a consideration by the mother in favour of one son when the mother was having sufficient means to maintain herself and infact was living with the petitioners-defendants. Other litigation is also pending between the family members claiming ownership of the property taking one plea or the other. In the written statement initially filed by the petitioners-defendants, no plea regarding execution of a registered will dated July 5, 1985 was taken by them as they were not in knowledge thereof. It was during the course of evidence that Jagtar Singh, PW-1, Document Writer, in his cross examination had brought his document register and on examination thereof, counsel for the petitioners-defendants found that at Sr. No.58 on July 5, 1985, there was an entry of sale deed and at Sr. No.59 on the same date, an entry was regarding execution of a Will by Smt. Tejwant Kaur widow of Capt. Tarlochan Labh Singh in favour of petitioner no.1 and other brother Baljit Singh. During the cross examination the witness submitted that the aforesaid Will was regarding the same house, which was in dispute in the present suit. By virtue of the Will, the petitioners-defendants had become owner of suit property to the extent of ½ share instead of 1/4th share as claimed in the written statement already filed. Having come to know about this fact, petitioners moved an application on March 17, 2006 seeking amendment of the written statement, which was objected to by the respondents-plaintiffs. On consideration of plea, prayer made by the petitioners-defendants, learned trial court dismissed the same primarily on the reason that application was belated and secondly that it was going to change the nature of the suit.

I have heard learned counsel for the parties and with their assistance perused the paper book.

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Mr. Sumeet Mahajan, learned Senior Counsel appearing for the petitioners submitted that once the petitioner was not in the knowledge of the will executed by his mother, there was no question of pleading the same in the written statement already filed. It was only during the course of cross examination of Document Writer produced by respondents/plaintiffs that the petitioner came to know, on perusal of the register produced by him, that infact his mother had executed a registered will which entitled the petitioner to ½ share of the property as against the 1/4th share claimed by him as one of the legal heir of Smt. Tejwant Kaur. Once a new fact had come on record only during the course of evidence, which entitled the petitioner more share in the property, the petitioner was justified in moving application for amendment of the written statement already filed by him. Mere permission to amend the written statement by taking the plea of ownership on the basis of registered Will, the respondents-plaintiffs were not going to suffer as the rights of parties were still to be determined by Court and whatever weight the Will carried, the same is yet to be examined. Petitioners-defendants should not be thrown out at the threshold merely at the stage of permission to amend the written statement though there is some delay in filing of the application but the same itself is not a good ground to reject the prayer made. As far as the reasoning given by the learned trial Court regarding change of nature of suit is concerned, learned Senior Counsel submitted that it was a stand being taken by the petitioners-defendants in the written statement to defeat the claim of the respondents-plaintiffs and there was no question of change of nature. Learned Senior counsel relied upon judgments in **Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon (1969) 1 Supreme Court Cases 869, B.K.Narayana Pillai Vs. Parameshwaran Pillai and another (2000) 1 Supreme Court Cases 712, Ragu Thilak D. John Vs. S.Rayappan and others (2001) 2 Supreme Court Cases 472, Sampath Kumar Vs. Ayyakannu and another (2002) 7 Supreme Court Cases 559, Rajesh Kumar Aggarwal and others Vs. K.K.Modi and others (2006) 4 Supreme Court Cases 385 and Baldev Singh and others Vs. Manohar**

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Singh and another (2006) 6 Supreme Court Cases 498.

On the other hand, learned counsel appearing for the respondents submitted that with the amendment in the written statement, petitioners are seeking to withdraw the admission already made in the written statement and further that application is highly belated and deserves to be dismissed as such. Learned counsel for the respondent relied judgments in **Oriental Fire and General Ins. Co. Ltd. Vs. Naresh and others 1990(2) Current Law Journal (C,Cr. & Rev.) 301 and Mani Raj Vs. Firm Radha Krisdhan Siri Niwas, G.T.Road, Hansi, Hisar and others 2003 (2) Indian Civil Cases 605.**

Hon'ble the Supreme Court in Baldev Singh's case (supra) held that the amendment of written statement stands at different pedestal as compared to amendment of plaint and observed as under:-

> "15. Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the trial court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not

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necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16. This being the position, we are, therefore, of the view that inconsistent pleas can be raised by the defendants in the written statement although the same may not be permissible in the case of plaint. In *Modi spg.and Wvg. Mills Co. Ltd. V. Ladha Ram & Co.* this principle has been enunciated by this court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the trial Court had gone wrong in holding that the defendant-appellants are not allowed to take inconsistent pleas in their defence.

Having heard learned counsel for the parties, I find merit in the submissions made by learned Senior Counsel appearing for the petitioners. As far as question of withdrawal of admission already made in the written statement is concerned, there is a valid explanation available on record to justify the same. Once there is justification available even for withdrawal of the admission already made in the written statement, the amendment can

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very well be permitted. In the present case all what respondents-plaintiffs can plead is that in the earlier written statement filed by the petitioner, he had admitted that each one of the party was owner of 1/4th share in the property belonging to Smt. Tejwant Kaur, who died intestate. However, now the stand was sought to be changed and petitioners-defendants were claiming ½ share and the claim of the respondents-defendants was completely ousted. However, reasons for seeking such amendment for withdrawal of admission already made in the written is a registered Will executed by Smt. Tejwant Kaur, which was not in the knowledge of the petitioners-defendants as the same was revealed only during the course of evidence being led by the respondents-plaintiffs. Once justification for withdrawal of the admission already made is available, there is no reason to deny even that.

As far as the question of change of nature of suit is concerned, it is only the stand being taken by the petitioner/defendant which is being changed/altered. The suit filed by the respondents/plaintiffs and the relief claimed do not change by that. It is only the defence being put by the petitioners-defendants which will undergo some changes after the amendment is allowed. As far as delay in filing of the application is concerned, the same itself is not sole ground for dismissal of the application in case the same is just and proper for the decision of the lis between the parties. No doubt the application is delayed after the petitioners/defendants came to know about the existence of the registered will, however, on that account the respondents/plaintiffs can very well be compensated with costs.

Accordingly, for the reasons stated above, the petition is allowed. The petitioner/defendant is permitted to amend the written statement already filed by him subject to payment of costs of Rs. 2,500/- to the respondents/plaintiffs.

September 07, 2007 **(Rajesh Bindal)**
Pka **Judge**